

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-2506-A

PETITION OF EAST COAST LANDSCAPE, INC.

OPINION OF THE BOARD

(Opinion Adopted January 11, 2006)

(Effective Date of Opinion: February 9, 2006)

Case No. S-2506-A is an application to modify a special exception for a landscape contractor. Specifically, the application requests permission for:

- 1) An increase in the land area covered by the special exception of 32,234.40 square feet or .74 acres for a gravity fed septic field; and for two proposed temporary structures;
- 2) A change of location for the previously approved two-story storage/office building;
- 3) Two above ground tanks for gasoline and diesel fuel for business vehicles and equipment. Each tank will hold 250 gallons and be 6' X 4' X 4' in size;
- 4) Relocation of the approved parking area for ten designated parking spaces;
- 5) A temporary trailer (9' X 19' X 8') for office purposes only, until the approved office/storage building is constructed;
- 6) A second location for the storage of topsoil, mulch and/or rock and allow both locations to be open storage areas;
- 7) Addition of a shipping container (8.5' x 8.5' x 20') for the storage of personal items and tools until construction of the approved office/storage building is constructed;
- 8) Temporary storage of plants requiring shade behind the existing 6' tall solid fence within a portion of the 50' buffer area located along the western property line of the proposed Parcel A;
- 9) Installation of an 8' tall deer fence around the approved plant storage area.

The subject property is Lot P075, Spencerville Knolls Subdivision, located at 2000 Spencerville Road, Spencerville, Maryland, 20868, in the RC-1 Zone.

The Hearing Examiner for Montgomery County held a hearing on the application on May 24, 2005, closed the record in the case on December 12, 2005, and on December 16, 2005, issued a Report and Recommendation for approval of the modification.

Decision of the Board: Special Exception Modification **Granted**
Subject to conditions enumerated below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on January 11, 2006. After careful consideration, and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. All terms and conditions of the approved special exception (S-2506) shall remain in full force and effect, except as modified by the Board as a result of this Modification Petition.
3. The Petitioner shall continue to operate solely as a landscape contractor, with no retail sales on site and no off-site snow removal operations.
4. The hours of operation shall be 7:00 a.m. to 7:00 p.m., Monday through Saturday. Landscaping crews must leave for work sites before 8:30 a.m.
5. The total number of employees on site at any one time shall not exceed nine (9) employees and the owner.
6. A modification of this special exception shall be required prior to any change in ownership of the area identified as proposed Lot B to determine any adverse effects upon proposed Lot B relating to the use.
7. Business vehicles stored or parked on-site shall be limited to the following 7 items or their replacements:
 - a. Three (3) stake body trucks,
 - b. Two (2) pick-ups,
 - c. One (1) skid loader, and

- d. One (1) tractor
- 8. Petitioner shall comply with the conditions of the Category One Forest Conservation Easement and the Afforestation Area on the subject site, as shown on the revised site plan, Exhibit 41(a).
- 9. Petitioner shall maintain, and replace as necessary, any plants that are called for on the revised landscaping plan (Exhibit 41(c)).
- 10. The existing driveway shall remain as shown on the site development plan and shall be maintained in good condition. It may not be modified absent review by Technical Staff and approval by the Board of Appeals.
- 11. Petitioner shall comply with storm water and sediment control regulations of the Montgomery County Department of Permitting Services.
- 12. Approval of a preliminary plan of subdivision must be obtained from the Montgomery County Planning Board prior to the earlier of (a) the issuance of a building permit for the storage/office building; or (b) April 1, 2006. Applicant must provide evidence of subdivision approval to the Board of Appeals to be entered into the record for the special exception. The storage office building shall have a footprint of 60 feet by 80 feet, and a height not to exceed 35 feet. Construction must be complete and temporary structures and trailers removed by September 30, 2006.¹ Within 10 days thereafter, Petitioner shall request, in writing, an inspection by DPS to insure compliance with the revised Site Plan and Landscape Plan, and the Board will retain jurisdiction to review DPS's report of that inspection.
- 13. Petitioner shall ensure that the all fuel storage tanks on site meet required technical standards as well as all county, state and federal permitting requirements, including reporting requirements in the event of a spill. The tanks must also have an underwriter's laboratory number on them, confirming that they are rated for above-ground storage. Fuel deliveries are limited to 9:00 a.m. to 4:00 p.m., Monday through Friday, twice a month from March through June and once a month the rest of the year. The Board should be advised in writing if changes to the contract with the fuel company or compliance with regulations result in different tanks or a change in their location.

¹ The removal date for temporary structures on the revised Site Plan (Exhibit 41(a)) should be modified to be consistent with the Planning Board's suggested September 30, 2006, date, which was adopted by the Hearing Examiner.

14. Petitioner shall ensure that all chemicals stored on site are stored in accordance with applicable Codes.
15. Pursuant to Zoning Ordinance §59-E-4.5, a waiver is granted from the double side-yard setback requirements contained in Zoning Ordinance §59-E-2.83(b) because those requirements are not necessary to accomplish the objectives of Zoning Ordinance §59-E-4.2; however, the waiver is conditioned upon Petitioner installing and maintaining the landscaping shown in the revised Landscape Plan (Exhibit 41(c)) in order to appropriately screen the parking facility and driveway from the neighborhood.
16. Petitioner is limited to six tractor trailer deliveries in March, two tractor trailer deliveries per month in April through June, one tractor trailer delivery in July, three tractor trailer deliveries in September, and one tractor trailer delivery per month from October through December. Smaller truck deliveries, such as dump trucks, may occur up to two times per month. Petitioner shall maintain a log of all deliveries.
17. The dimensions of Petitioner's relocated sign may not exceed two feet by one foot, unless a sign variance is obtained. The sign will be unlighted. Petitioner should submit a "mock-up" of the sign he will use to the Board within 30 days of its decision.
18. Lighting on the subject site is limited to three 150 watt (2,000 lumen) floodlights mounted at a height of 30 feet on the proposed office/storage building. The lights may be on a motion sensor, but must be completely off (*i.e.* no motion sensor or other operation) between the hours of 7:30 p.m. and 7:00 a.m. Although cut-sheets of the intended fixtures submitted by Petitioner show double-socket floodlights, Petitioner may not illuminate more than three floodlight bulbs at any given time.
19. If concrete bases on the proposed topsoil/mulch/rock bins are not approved by DPS or the Planning Board, then Petitioner may have a gravel or natural surface at the bottom of the bins.
20. Petitioner may not maintain a shed on the subject site without express permission from the Board of Appeals. Based on the representation of Petitioner's Counsel in a letter dated November 10, 2005 (Exhibit 47), the shed that was cited as a violation by DPS on April 15, 2004 (Exhibit 23) is not located on the subject site (*i.e.*, Proposed Lot A) and no longer contains equipment used in the business. Petitioner may not use the shed in question, or any other ancillary structure on the residential lot (Proposed Lot B), for business purposes related to this special exception.

21. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including, as applicable, but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Angelo M. Caputo, seconded by Wendell M. Holloway, with Donna L. Barron, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 9th day of February, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of

the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.